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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH ANDREW LATHON,

Defendant.

No. CR 5:22-cr-00230-JFW

PLEA AGREEMENT FOR DEFENDANT
KENNETH ANDREW LATHON

1. This constitutes the plea agreement between Kenneth Andrew Lathon ("defendant") and the United States Attorney's Office for the Central District of California (the "USAO") in the investigation of fraudulent Unemployment Insurance ("UI") benefits claims filed with the California Employment Development Department ("EDD") from in or about February 2020 through March 23, 2021, and the investigation of firearms seized from defendant's residence on or about March 23, 2021. This agreement is limited to the USAO and cannot bind any other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authorities.

DEFENDANT'S OBLIGATIONS

2. Defendant agrees to:

a. Give up the right to indictment by a grand jury and, at the earliest opportunity requested by the USAO and provided by the Court, appear and plead guilty to counts 1, 2, and 3 of the information in the form attached to this agreement as Exhibit A or a substantially similar form, which charges defendant with conspiracy to commit mail and wire fraud in violation of 18 U.S.C. § 1349, aggravated identity theft in violation of 18 U.S.C. § 1028A(a)(1), and being a felon in possession of firearms in violation of 18 U.S.C. § 922(g)(1).

b. Not contest facts agreed to in this agreement.

c. Abide by all agreements regarding sentencing contained in this agreement.

d. Appear for all court appearances, surrender as ordered for service of sentence, obey all conditions of any bond, and obey any other ongoing court order in this matter.

e. Not commit any crime; however, offenses that would be excluded for sentencing purposes under United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not within the scope of this agreement.

f. Be truthful at all times with the United States Probation and Pretrial Services Office and the Court.

g. Pay the applicable special assessments at or before the time of sentencing unless defendant has demonstrated a lack of ability to pay such assessments.

3. Defendant further agrees:

1 a. To forfeit all right, title, and interest in and to
2 any and all monies, properties, and/or assets of any kind, derived
3 from or acquired as a result of the illegal activity to which
4 defendant is pleading guilty, specifically including, but not limited
5 to the following items seized by law enforcement on March 23, 2021:

6 i. a Remington, Mohawk 10C, .22 caliber rifle
7 bearing serial number 2452183;

8 ii. a Mossberg, 500 ATP, 12-gauge shotgun with an
9 attached ammunition saddle;

10 iii. a privately manufactured AR-style rifle bearing
11 no serial number; and

12 iv. Approximately \$73,890 in U.S. Currency, which
13 defendant agrees constitutes traceable proceeds of the 18 U.S.C.
14 § 1349 violation (count one) (collectively, "Forfeitable Property").

15 b. To the Court's entry of an order of forfeiture at or
16 before sentencing with respect to the Forfeitable Property and to the
17 forfeiture of the Forfeitable Property.

18 c. To take whatever steps are necessary to pass to the
19 United States clear title to the Forfeitable Property, including,
20 without limitation, the execution of a consent decree of forfeiture
21 and the completing of any other legal documents required for the
22 transfer of title to the United States.

23 d. Not to contest any administrative forfeiture
24 proceedings or civil judicial proceedings commenced against the
25 Forfeitable Assets. If defendant submitted a claim and/or petition
26 for remission for all or part of the Forfeitable Property on behalf
27 of himself or any other individual or entity, defendant shall and
28 hereby does withdraw any such claims or petitions, and further agrees

1 to waive any right he may have to seek remission or mitigation of the
2 forfeiture of the Forfeitable Property. Defendant further waives any
3 and all notice requirements of 18 U.S.C. § 983(a)(1)(A).

4 e. Not to assist any other individual in any effort
5 falsely to contest the forfeiture of the Forfeitable Property.

6 f. Not to claim that reasonable cause to seize the
7 Forfeitable Assets was lacking.

8 g. To prevent the transfer, sale, destruction, or loss of
9 any and all assets described above to the extent defendant has the
10 ability to do so.

11 h. To fill out and deliver to the USAO a completed
12 financial statement listing defendant's assets on a form provided by
13 the USAO.

14 i. That forfeiture of Forfeitable Assets shall not be
15 counted toward satisfaction of any special assessment, fine,
16 restitution, costs, or other penalty the Court may impose.

17 THE USAO'S OBLIGATIONS

18 4. The USAO agrees to:

19 a. Not contest facts agreed to in this agreement.

20 b. Abide by all agreements regarding sentencing contained
21 in this agreement.

22 c. At the time of sentencing, provided that defendant
23 demonstrates an acceptance of responsibility for the offenses up to
24 and including the time of sentencing, recommend a two-level reduction
25 in the applicable Sentencing Guidelines offense level, pursuant to
26 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an
27 additional one-level reduction if available under that section.
28

1 d. Recommend that defendant be sentenced to a term of
2 imprisonment no higher than the low end of the applicable Sentencing
3 Guidelines range, provided that the offense level used by the Court
4 to determine that range is 20 or higher and provided that the Court
5 does not depart downward in offense level or criminal history
6 category. For purposes of this agreement, the low end of the
7 Sentencing Guidelines range is that defined by the Sentencing Table
8 in U.S.S.G. Chapter 5, Part A.

9 NATURE OF THE OFFENSES

10 5. Defendant understands that for defendant to be guilty of
11 the crime charged in count one, that is, conspiracy, in violation of
12 18 U.S.C. § 1349, the following must be true: (1) beginning no later
13 than on or about February 2, 2020 and continuing through at least on
14 or about March 23, 2021, there was an agreement between two or more
15 persons to commit mail fraud and wire fraud; (2) defendant became a
16 member of the conspiracy knowing of at least one of its objects and
17 intending to help accomplish it; and (3) one of the members of the
18 conspiracy performed at least one overt act for the purpose of
19 carrying out the conspiracy.

20 6. Defendant understands that for defendant to be guilty of
21 the crime charged in count two, that is, aggravated identity theft,
22 in violation of 18 U.S.C. § 1028A(a)(1), the following must be true:
23 (1) defendant knowingly possessed or used without legal authority a
24 means of identification of another person; (2) defendant knew that
25 the means of identification belonged to a real person; and (3)
26 defendant did so during and in relation to a conspiracy to commit
27 mail fraud and wire fraud as charged in count one of the Information.
28

1 7. Defendant understands that for defendant to be guilty of
2 the crime charged in count three, that is, being a felon in
3 possession of firearms, in violation of 18 U.S.C. § 922(g)(1), the
4 following must be true: (1) defendant knowingly possessed the
5 firearms alleged in count three of the Information; (2) the firearms
6 had been shipped or transported from one state to another or between
7 a foreign nation and the United States; (3) at the time defendant
8 possessed the firearms, the defendant had been convicted of a felony,
9 which is a crime punishable by imprisonment for a term exceeding one
10 year; and (4) at the time defendant possessed the firearms, the
11 defendant knew he had been convicted of a felony.

12 PENALTIES AND RESTITUTION

13 8. Defendant understands that the statutory maximum sentence
14 that the Court can impose for a violation of 18 U.S.C. § 1349, as
15 charged in count one of the Information is: 20 years' imprisonment; a
16 3-year period of supervised release; a fine of \$250,000 or twice the
17 gross gain or gross loss resulting from the offense, whichever is
18 greatest; and a mandatory special assessment of \$100.

19 9. Defendant understands that the statutory mandatory sentence
20 that the Court must impose for a violation of 18 U.S.C. § 1028A, as
21 charged in count two of the Information, is a two-year term of
22 imprisonment, which must run consecutive to any other sentence of
23 imprisonment, and a mandatory special assessment of \$100.

24 10. Defendant understands that the statutory maximum sentence
25 that the Court can impose for a violation of 18 U.S.C. § 922(g)(1),
26 as charged in count three of the Information is: 10 years'
27 imprisonment; a 3-year period of supervised release; a fine of
28 \$250,000 or twice the gross gain or gross loss resulting from the

1 offense, whichever is greatest; and a mandatory special assessment of
2 \$100.

3 11. Defendant understands, therefore, that the total maximum
4 sentence for all offenses to which defendant is pleading guilty is:
5 32 years' imprisonment; a 3-year period of supervised release; a fine
6 of \$750,000 or twice the gross gain or gross loss resulting from the
7 offenses, whichever is greatest; and a mandatory special assessment
8 of \$300.

9 12. Defendant understands that supervised release is a period
10 of time following imprisonment during which defendant will be subject
11 to various restrictions and requirements. Defendant understands that
12 if defendant violates one or more of the conditions of any supervised
13 release imposed, defendant may be returned to prison for all or part
14 of the term of supervised release authorized by statute for the
15 offense that resulted in the term of supervised release, which could
16 result in defendant serving a total term of imprisonment greater than
17 the statutory maximum stated above.

18 13. Defendant understands that defendant will be required to
19 pay full restitution to the victims of the offenses to which
20 defendant is pleading guilty. Defendant agrees that, in return for
21 the USAO's compliance with its obligations under this agreement, the
22 Court may order restitution to persons other than the victims of the
23 offenses to which defendant is pleading guilty and in amounts greater
24 than those alleged in the counts to which defendant is pleading
25 guilty. In particular, defendant agrees that the Court may order
26 restitution to any victim of any of the following for any losses
27 suffered by that victim as a result: (a) any relevant conduct, as
28 defined in U.S.S.G. § 1B1.3, in connection with the offenses to which

1 defendant is pleading guilty; and (b) any charges not prosecuted
2 pursuant to this agreement as well as all relevant conduct, as
3 defined in U.S.S.G. § 1B1.3, in connection with those charge. The
4 parties currently believe that the applicable amount of restitution
5 is approximately \$998,630, to be paid to victim California EDD, but
6 recognize and agree that this amount could change based on facts that
7 come to the attention of the parties prior to sentencing.

8 14. Defendant understands that, by pleading guilty, defendant
9 may be giving up valuable government benefits and valuable civic
10 rights, such as the right to vote, the right to possess a firearm,
11 the right to hold office, and the right to serve on a jury. Defendant
12 understands that he is pleading guilty to a felony and that it is a
13 federal crime for a convicted felon to possess a firearm or
14 ammunition. Defendant understands that the convictions in this case
15 may also subject defendant to various other collateral consequences,
16 including but not limited to revocation of probation, parole, or
17 supervised release in another case and suspension or revocation of a
18 professional license. Defendant understands that unanticipated
19 collateral consequences will not serve as grounds to withdraw
20 defendant's guilty pleas.

21 15. Defendant and his counsel have discussed the fact that, and
22 defendant understands that, if defendant is not a United States
23 citizen, the convictions in this case makes it practically inevitable
24 and a virtual certainty that defendant will be removed or deported
25 from the United States. Defendant may also be denied United States
26 citizenship and admission to the United States in the future.
27 Defendant understands that while there may be arguments that
28 defendant can raise in immigration proceedings to avoid or delay

1 removal, removal is presumptively mandatory and a virtual certainty
2 in this case. Defendant further understands that removal and
3 immigration consequences are the subject of a separate proceeding and
4 that no one, including his attorney or the Court, can predict to an
5 absolute certainty the effect of his convictions on his immigration
6 status. Defendant nevertheless affirms that he wants to plead guilty
7 regardless of any immigration consequences that his/her pleas may
8 entail, even if the consequence is automatic removal from the United
9 States.

10 FACTUAL BASIS

11 16. Defendant admits that defendant is, in fact, guilty of the
12 offenses to which defendant is agreeing to plead guilty. Defendant
13 and the USAO agree to the statement of facts provided in Exhibit B
14 attached hereto and agree that this statement of facts is sufficient
15 to support pleas of guilty to the charges described in this agreement
16 and to establish the Sentencing Guidelines factors set forth in
17 paragraph 18 below but is not meant to be a complete recitation of
18 all facts relevant to the underlying criminal conduct or all facts
19 known to either party that relate to that conduct.

20 SENTENCING FACTORS

21 17. Defendant understands that in determining defendant's
22 sentence the Court is required to calculate the applicable Sentencing
23 Guidelines range and to consider that range, possible departures
24 under the Sentencing Guidelines, and the other sentencing factors set
25 forth in 18 U.S.C. § 3553(a). Defendant understands that the
26 Sentencing Guidelines are advisory only, that defendant cannot have
27 any expectation of receiving a sentence within the calculated
28 Sentencing Guidelines range, and that after considering the

1 Sentencing Guidelines and the other § 3553(a) factors, the Court will
 2 be free to exercise its discretion to impose any sentence it finds
 3 appropriate between the mandatory minimum and up to the maximum set
 4 by statute for the crimes of conviction.

5 18. Defendant and the USAO agree to the following applicable
 6 Sentencing Guidelines factors:

7	Base Offense Level:	7	U.S.S.G. § 2B1.1(a)(1)
8	Loss greater than \$550,000		
9	but less than \$1,500,000	+14	U.S.S.G. § 2B1.1(b)(1)(H)
10	More than 10 victims:	+2	U.S.S.G. § 2B1.1(b)(2)(A)

11 Defendant and the USAO reserve the right to argue that additional
 12 specific offense characteristics, adjustments, and departures under
 13 the Sentencing Guidelines are appropriate. Defendant understands
 14 that the Court must sentence defendant to a term of two years
 15 imprisonment on count three, which must run consecutive to any term
 16 of imprisonment imposed for counts one and four.

17 19. Defendant understands that there is no agreement as to
 18 defendant's criminal history or criminal history category.

19 20. Defendant and the USAO reserve the right to argue for a
 20 sentence outside the sentencing range established by the Sentencing
 21 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),
 22 (a)(2), (a)(3), (a)(6), and (a)(7).

23 WAIVER OF CONSTITUTIONAL RIGHTS

24 21. Defendant understands that by pleading guilty, defendant
 25 gives up the following rights:

- 26 a. The right to persist in a plea of not guilty.
- 27 b. The right to a speedy and public trial by jury.

1 c. The right to be represented by counsel -- and if
2 necessary have the Court appoint counsel -- at trial. Defendant
3 understands, however, that, defendant retains the right to be
4 represented by counsel -- and if necessary have the Court appoint
5 counsel -- at every other stage of the proceeding.

6 d. The right to be presumed innocent and to have the
7 burden of proof placed on the government to prove defendant guilty
8 beyond a reasonable doubt.

9 e. The right to confront and cross-examine witnesses
10 against defendant.

11 f. The right to testify and to present evidence in
12 opposition to the charges, including the right to compel the
13 attendance of witnesses to testify.

14 g. The right not to be compelled to testify, and, if
15 defendant chose not to testify or present evidence, to have that
16 choice not be used against defendant.

17 h. Any and all rights to pursue any affirmative defenses,
18 Fourth Amendment or Fifth Amendment claims, and other pretrial
19 motions that have been filed or could be filed.

20 WAIVER OF APPEAL OF CONVICTION

21 22. Defendant understands that, with the exception of an appeal
22 based on a claim that defendant's guilty pleas were involuntary, by
23 pleading guilty defendant is waiving and giving up any right to
24 appeal defendant's convictions on the offenses to which defendant is
25 pleading guilty. Defendant understands that this waiver includes,
26 but is not limited to, arguments that the statutes to which defendant
27 is pleading guilty are unconstitutional, and any and all claims that
28

1 the statement of facts provided herein is insufficient to support
2 defendant's pleas of guilty.

3 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

4 23. Defendant agrees that, provided the Court imposes a total
5 term of imprisonment on all counts of conviction of no more than 70
6 months, defendant gives up the right to appeal all of the following:
7 (a) the procedures and calculations used to determine and impose any
8 portion of the sentence; (b) the term of imprisonment imposed by the
9 Court; (c) the fine imposed by the Court, provided it is within the
10 statutory maximum; (d) to the extent permitted by law, the
11 constitutionality or legality of defendant's sentence, provided it is
12 within the statutory maximum; (e) the amount and terms of any
13 restitution order, provided it requires payment of no more than
14 \$998,630; (f) the term of probation or supervised release imposed by
15 the Court, provided it is within the statutory maximum; and (g) any
16 of the following conditions of probation or supervised release
17 imposed by the Court: the conditions set forth in Second Amended
18 General Order 20-04 of this Court; the drug testing conditions
19 mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and
20 drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

21 24. The USAO agrees that, provided (a) all portions of the
22 sentence are at or above the statutory minimum and at or below the
23 statutory maximum specified above and (b) the Court imposes a term of
24 imprisonment of no less than 61 months, the USAO gives up its right
25 to appeal any portion of the sentence, with the exception that the
26 USAO reserves the right to appeal the following: (a) the amount of
27 restitution ordered if that amount is less than \$998,630.

1 RESULT OF WITHDRAWAL OF GUILTY PLEA

2 25. Defendant agrees that if, after entering guilty pleas
3 pursuant to this agreement, defendant seeks to withdraw and succeeds
4 in withdrawing defendant's guilty pleas on any basis other than a
5 claim and finding that entry into this plea agreement was
6 involuntary, then (a) the USAO will be relieved of all of its
7 obligations under this agreement; and (b) should the USAO choose to
8 pursue any charge that was not filed as a result of this agreement,
9 then (i) any applicable statute of limitations will be tolled between
10 the date of defendant's signing of this agreement and the filing
11 commencing any such action; and (ii) defendant waives and gives up
12 all defenses based on the statute of limitations, any claim of pre-
13 indictment delay, or any speedy trial claim with respect to any such
14 action, except to the extent that such defenses existed as of the
15 date of defendant's signing this agreement.

16 EFFECTIVE DATE OF AGREEMENT

17 26. This agreement is effective upon signature and execution of
18 all required certifications by defendant, defendant's counsel, and an
19 Assistant United States Attorney.

20 BREACH OF AGREEMENT

21 27. Defendant agrees that if defendant, at any time after the
22 signature of this agreement and execution of all required
23 certifications by defendant, defendant's counsel, and an Assistant
24 United States Attorney, knowingly violates or fails to perform any of
25 defendant's obligations under this agreement ("a breach"), the USAO
26 may declare this agreement breached. All of defendant's obligations
27 are material, a single breach of this agreement is sufficient for the
28 USAO to declare a breach, and defendant shall not be deemed to have

1 cured a breach without the express agreement of the USAO in writing.
2 If the USAO declares this agreement breached, and the Court finds
3 such a breach to have occurred, then: (a) if defendant has previously
4 entered guilty pleas pursuant to this agreement, defendant will not
5 be able to withdraw the guilty pleas, and (b) the USAO will be
6 relieved of all its obligations under this agreement.

7 28. Following the Court's finding of a knowing breach of this
8 agreement by defendant, should the USAO choose to pursue any charge
9 that was either dismissed or not filed as a result of this agreement,
10 then:

11 a. Defendant agrees that any applicable statute of
12 limitations is tolled between the date of defendant's signing of this
13 agreement and the filing commencing any such action.

14 b. Defendant waives and gives up all defenses based on
15 the statute of limitations, any claim of pre-indictment delay, or any
16 speedy trial claim with respect to any such action, except to the
17 extent that such defenses existed as of the date of defendant's
18 signing this agreement.

19 c. Defendant agrees that: (i) any statements made by
20 defendant, under oath, at the guilty plea hearing (if such a hearing
21 occurred prior to the breach); (ii) the agreed to factual basis
22 statement in this agreement; and (iii) any evidence derived from such
23 statements, shall be admissible against defendant in any such action
24 against defendant, and defendant waives and gives up any claim under
25 the United States Constitution, any statute, Rule 410 of the Federal
26 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
27 Procedure, or any other federal rule, that the statements or any
28

1 evidence derived from the statements should be suppressed or are
2 inadmissible.

3 COURT AND UNITED STATES PROBATION AND PRETRIAL SERVICES

4 OFFICE NOT PARTIES

5 29. Defendant understands that the Court and the United States
6 Probation and Pretrial Services Office are not parties to this
7 agreement and need not accept any of the USAO's sentencing
8 recommendations or the parties' agreements to facts or sentencing
9 factors.

10 30. Defendant understands that both defendant and the USAO are
11 free to: (a) supplement the facts by supplying relevant information
12 to the United States Probation and Pretrial Services Office and the
13 Court, (b) correct any and all factual misstatements relating to the
14 Court's Sentencing Guidelines calculations and determination of
15 sentence, and (c) argue on appeal and collateral review that the
16 Court's Sentencing Guidelines calculations and the sentence it
17 chooses to impose are not error, although each party agrees to
18 maintain its view that the calculations in paragraph 18 are
19 consistent with the facts of this case. While this paragraph permits
20 both the USAO and defendant to submit full and complete factual
21 information to the United States Probation and Pretrial Services
22 Office and the Court, even if that factual information may be viewed
23 as inconsistent with the facts agreed to in this agreement, this
24 paragraph does not affect defendant's and the USAO's obligations not
25 to contest the facts agreed to in this agreement.

26 31. Defendant understands that even if the Court ignores any
27 sentencing recommendation, finds facts or reaches conclusions
28 different from those agreed to, and/or imposes any sentence up to the

1 maximum established by statute, defendant cannot, for that reason,
2 withdraw defendant's guilty pleas, and defendant will remain bound to
3 fulfill all defendant's obligations under this agreement. Defendant
4 understands that no one -- not the prosecutor, defendant's attorney,
5 or the Court -- can make a binding prediction or promise regarding
6 the sentence defendant will receive, except that it will be between
7 the statutory mandatory minimum and the statutory maximum.

8 NO ADDITIONAL AGREEMENTS

9 32. Defendant understands that, except as set forth herein,
10 there are no promises, understandings, or agreements between the USAO
11 and defendant or defendant's attorney, and that no additional
12 promise, understanding, or agreement may be entered into unless in a
13 writing signed by all parties or on the record in court.

14 ///

15 ///

16 ///

17 ///

PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

33. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

STEPHANIE S. CHRISTENSEN
Acting United States Attorney


BYRON R. TUYAY
Assistant United States Attorney
Riverside Branch Office

8/30/2022
Date


KENNETH ANDREW LATHON
Defendant

8/29/22
Date


JENAE MCDONALD
Attorney for Defendant
KENNETH ANDREW LATHON

08//30/22
Date

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.


KENNETH ANDREW LATHON
Defendant8/29/22
Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am Kenneth Andrew Lathon's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of guilty pleas pursuant to this agreement.



JENAE MCDONALD
Attorney for Defendant
KENNETH ANDREW LATHON

08/30/22

Date

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH ANDREW LATHON,

Defendant.

ED CR No. 22-

I N F O R M A T I O N

[18 U.S.C. § 1349: Conspiracy to Commit Mail and Wire Fraud; 18 U.S.C. § 1028A(a)(1): Aggravated Identity Theft; 18 U.S.C. § 922(g)(1): Felon in Possession of Firearms; 18 U.S.C. § 981(a)(1)(C), 18 U.S.C. § 924(d)(1), and 28 U.S.C. § 2461(c): Criminal Forfeiture]

The Acting United States Attorney charges:

COUNT ONE

[18 U.S.C. § 1349]

A. INTRODUCTORY ALLEGATIONS

At times relevant to this Information:

1. Defendant KENNETH ANDREW LATHON was a resident of Moreno Valley, California.

2. Beginning no later than 2014, and continuing to the present, defendant LATHON's spouse, Co-conspirator 1, operated at

1 least three businesses involved in providing tax preparation services
2 to the public: Miracle Tax Services, Hardcore Corporation (doing
3 business as "Hardcore Taxes"), and Lathon LLC (doing business as "LL
4 Taxes"). Individuals seeking tax preparation services from Co-
5 Conspirator 1 provided her with their personal identifying
6 information ("PII"), including their names, dates of birth, and
7 social security numbers.

8 3. California's Employment Development Department ("EDD") was
9 the administrator of the unemployment insurance ("UI") benefit
10 program for the State of California.

11 4. On March 13, 2020, the President of the United States
12 declared COVID-19 an emergency under the Robert T. Stafford Disaster
13 Relief and Emergency Assistance Act. As a result, Congress passed
14 the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"),
15 which the President signed into law on March 27, 2020. The CARES Act
16 provided over \$2 trillion in economic relief protections to the
17 American people from the public health and economic impacts of COVID-
18 19.

19 5. Prior to the enactment of the CARES Act, to be eligible for
20 UI administered by EDD, a person had to have been employed and worked
21 in California and received at least a certain amount of wages from an
22 employer in the 18 months preceding his/her UI benefits claim.
23 Because of this requirement, self-employed workers, independent
24 contractors, and employees with insufficient earnings were not
25 eligible to receive regular UI benefits.

26 6. The CARES Act established a new program - Pandemic
27 Unemployment Assistance ("PUA") -- to provide unemployment benefits
28 during the COVID-19 pandemic to people who did not qualify for

1 regular unemployment insurance benefits, including business owners,
2 self-employed workers, independent contractors, and those with
3 limited work history who were out of business or had significantly
4 reduced their services as a direct result of the pandemic. UI
5 benefits provided under the PUA program were sometimes referred to as
6 PUA benefits.

7 7. Under the PUA provisions of the CARES Act, a person who was
8 a business owner, self-employed worker, independent contractor, or
9 gig worker could qualify for PUA benefits administered by EDD if
10 he/she previously performed such work in California and was
11 unemployed, partially unemployed, unable to work, or unavailable to
12 work due to a COVID-19-related reason.

13 8. Persons applying for PUA benefits did not need to submit
14 any supporting documents to EDD with their applications. Claimants
15 entered their total income for the 2019 calendar year on the
16 application. The stated income was used to pay the minimum benefits
17 of \$167 per week. EDD could request documentation to provide proof
18 of the stated income.

19 9. A PUA claimant was required to answer various questions to
20 establish his/her eligibility for PUA benefits. The claimant was
21 required to provide his/her name, social security number, and mailing
22 address. The claimant was also required to identify a qualifying
23 occupational status and COVID-19 related reason for being out of
24 work.

25 10. After it accepted a UI claim, including a claim submitted
26 pursuant to the PUA program, EDD typically deposited UI funds every
27 two weeks to an Electronic Benefit Payment ("EBP") debit card
28 administered by Bank of America ("BofA"), which the claimant could

1 use to pay for his/her expenses. The EBP debit card was mailed via
2 the United States Postal Service to the claimant at the address the
3 claimant provided in his/her UI application.

4 B. THE OBJECTS OF THE CONSPIRACY

5 Beginning no later than on or about February 2, 2020, and
6 continuing through at least on or about March 23, 2021, in Riverside
7 County within the Central District of California, and elsewhere,
8 defendant LATHON and his spouse, Co-conspirator 1, together with
9 others known and unknown to the Acting United States Attorney,
10 knowingly and with intent to defraud, conspired to commit offenses
11 against the United States, namely, mail fraud, in violation of Title
12 18, United States Code, Section 1341, and wire fraud, in violation of
13 Title 18, United States Code, Section 1343.

14 C. THE MANNER AND MEANS OF THE CONSPIRACY

15 11. The objects of the conspiracy were carried out, and were to
16 be carried out, in substance, as follows:

17 a. Defendant LATHON and Co-conspirator 1 filed and caused
18 the filing with EDD of fraudulent applications for UI benefits that
19 falsely asserted the named claimants were self-employed independent
20 contractors who had been negatively affected by the COVID-19
21 pandemic, thereby triggering eligibility for UI benefits under the
22 PUA provision of the CARES Act. In some instances, Co-conspirator 1
23 submitted fraudulent applications for UI benefits using names, social
24 security numbers and dates of birth that they obtained from former
25 clients of Co-conspirator 1's tax preparation businesses without the
26 permission of those former clients. Co-conspirator 1 also paid
27 others in exchange for third parties' names, dates of birth, and
28 social security numbers to use on EDD applications. In all

1 instances, defendant LATHON knew that Co-Conspirator 1 submitted the
2 applications using others' PII intending to secure the benefits for
3 defendant LATHON, Co-Conspirator 1, and their co-conspirators by
4 having the EBP debit cards mailed to addresses that defendant LATHON
5 and Co-conspirator 1 could collect mail.

6 b. In some instances, Co-conspirator 1 falsely asserted
7 and caused to be asserted on the UI applications submitted in
8 furtherance of the conspiracy that the claimants were residents of
9 California entitled to UI benefits administered by EDD when, in fact,
10 they were not, and defendant LATHON knew they were not.

11 c. In some instances, Co-conspirator 1 falsely asserted
12 and caused to be asserted inflated income for the named claimants on
13 their applications in order to receive the maximum benefit amount.

14 d. In some instances, Co-conspirator 1 and other co-
15 conspirators made up and caused to be made up the occupation that was
16 listed for the named claimant on the application.

17 e. To the contrary, and as defendant LATHON then well
18 knew, many of the persons named as claimants on the applications Co-
19 conspirator 1 filed and caused to be filed had no residential history
20 in the State of California and/or had not been employed in the
21 occupations that Co-conspirator 1 reported and caused to be reported
22 on the UI benefits applications she submitted and caused to be
23 submitted in the names of the named claimants.

24 f. By falsely asserting that the claimants had worked in
25 the State of California as independent contractors who had lost work
26 because of COVID-19, Co-conspirator 1 falsely represented and caused
27 to be falsely represented that the named claimants were entitled to
28

1 UI benefits administered by EDD when, as defendant LATHON then knew,
2 they were not.

3 g. As a result of the fraudulent UI benefit claims that
4 defendant Co-conspirator 1 filed and caused to be filed, EDD
5 authorized BofA to issue EBP debit cards in the names of the named
6 claimants. Defendant LATHON knew that the applications Co-
7 Conspirator 1 submitted would cause BofA to mail EBP debit cards
8 issued to the named claimants via the United States Postal Service to
9 the addresses defendant Co-conspirator 1 provided on the fraudulent
10 UI claim applications, including addresses that defendant LATHON and
11 his co-conspirators controlled.

12 h. Defendant LATHON and Co-conspirator 1 would use the
13 EBP debit cards, or direct others to use the EBP debit cards, to make
14 cash withdrawals at automated teller machines ("ATMs") and to make
15 purchases at retail stores, both types of transactions involved wire
16 communication in interstate commerce.

17 i. Through this conspiracy, defendant LATHON and Co-
18 conspirator 1 caused at least 44 fraudulent PUA claims to be filed,
19 resulting in losses to EDD and the United States Treasury of
20 approximately \$998,630.

21 D. OVERT ACTS

22 12. In furtherance of the conspiracy and to accomplish its
23 objects, defendant LATHON, Co-conspirator 1, and other co-
24 conspirators known and unknown to the Acting United States Attorney,
25 committed, and willfully caused others to commit, various overt acts
26 within the Central District of California, and elsewhere, including,
27 but not limited to, the following:

1 Overt Act No. 1: On August 26, 2020, defendant LATHON used
2 the EBP debit card held in victim A.C.'s name to withdraw \$1,000 from
3 an ATM in Escondido, California.

4 Overt Act No. 2: On September 7, 2020, defendant LATHON and
5 Co-conspirator 1 used the EBP debit cards held in the names of
6 victims L.L. and D.P. to withdraw \$2,000 from an ATM in Upland,
7 California.

COUNT TWO

[18 U.S.C. § 1028A(a)(1)]

On or about August 24, 2020, in the County of Orange, within the Central District of California, and elsewhere, defendant KENNETH ANDREW LATHON knowingly possessed and used, without lawful authority, means of identification that defendant LATHON knew belonged to another person, namely, the name of A.C., during and in relation to the offense of Conspiracy to Commit Mail Fraud and Wire Fraud, a felony in violation of Title 18, United States Code, Section 1349, as charged in Count One of this Information.

COUNT THREE

[18 U.S.C. § 922(g)(1)]

On or about March 23, 2021, in Riverside County, within the Central District of California, defendant KENNETH ANDREW LATHON knowingly possessed the following firearms, in and affecting interstate and foreign commerce:

13. a Remington, Mohawk 10C, .22 caliber rifle bearing serial number 2452183; and

14. a Mossberg, 500 ATP, 12-gauge shotgun with an attached ammunition saddle, bearing no identifiable serial number.

Defendant LATHON possessed such firearms knowing that he had previously been convicted of at least one of the following felony crimes, each punishable by a term of imprisonment exceeding one year:

1. Receiving Stolen Property, in violation of California Penal Code Section 496(a) and Possession of a Completed Check with Intent to Defraud, in violation of California Penal Code Section 475(a), in the Superior Court of California, County of Orange, case number SH975F0412, on or about May 8, 1997;

2. Possession of Cocaine, in violation of California Penal Code Section 11350(a), in the Superior Court of California, County of Los Angeles, case number KA020702, on or about March 3, 1998; and

3. Fraud to Obtain Aid by Misrepresentation, in violation of Welfare and Institutions Code Section 10980(c)(2), in the Superior Court of California, County of San Bernardino, case number FSB1104727, on or about May 16, 2012.

FORFEITURE ALLEGATION ONE

[18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)]

1. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given that the United States of America will seek forfeiture as part of any sentence, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), in the event of any defendant's conviction of the offenses set forth in Counts One or Two of this Information.

2. Any defendant so convicted shall forfeit to the United States of America the following:

(a) All right, title, and interest in any and all property, real or personal, constituting, or derived from, any proceeds traceable to the offense; and

(b) To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraph (a).

3. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), any defendant so convicted shall forfeit substitute property, up to the value of the property described in the preceding paragraph if, as the result of any act or omission of said defendant, the property described in the preceding paragraph or any portion thereof (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to, or deposited with a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been

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1 substantially diminished in value; or (e) has been commingled with
2 other property that cannot be divided without difficulty.

FORFEITURE ALLEGATION TWO

[18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c)]

1. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given that the United States of America will seek forfeiture as part of any sentence, pursuant to Title 18, United States Code, Section 924(d)(1), and Title 28, United States Code, Section 2461(c), in the event of any defendant's conviction of the offense set forth Count Three of this Information.

2. Any defendant so convicted shall forfeit to the United States of America the following:

(a) All right, title, and interest in any firearm or ammunition involved in or used in any such offense, to include a Remington, Mohawk 10C, .22 caliber rifle bearing serial number 2452183 and a Mossberg, 500 ATP, 12-gauge shotgun with an attached ammunition saddle, bearing no identifiable serial number, and an unknown make AR-15 pattern rifle, bearing no serial number; and

(b) To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraph (a).

3. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), the convicted defendant shall forfeit substitute property, up to the value of the property described in the preceding paragraph if, as the result of any act or omission of said defendant, the property described in the preceding paragraph or any portion thereof (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to, or deposited with a third party; (c) has been placed beyond the jurisdiction of the court;

1
2 (d) has been substantially diminished in value; or (e) has been
3 commingled with other property that cannot be divided without
4 difficulty.

5 STEPHANIE S. CHRISTENSEN
6 Acting United States Attorney
7

8 SCOTT M. GARRINGER
9 Assistant United States Attorney
Chief, Criminal Division

10 SEAN D. PETERSON
11 Assistant United States Attorney
Chief, Riverside Branch Office

12 BYRON R. TUYAY
13 Assistant United States Attorney
Riverside Branch Office
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EXHIBIT B

STATEMENT OF FACTS IN SUPPORT OF PLEA AGREEMENT

Kenneth Andrew Lathon ("defendant") represents and admits that the following facts are true:

Background on Unemployment Insurance Program

At all times relevant to the charge in the Information:

- a. Defendant was a resident of Moreno Valley, California.
- b. Beginning no later than 2014 to the present, defendant's spouse, Co-conspirator 1, operated at least three businesses involved in providing tax preparation services to the public: Miracle Tax Services, Hardcore Corporation (doing business as "Hardcore Taxes"), and Lathon LLC (doing business as "LL Taxes"). Individuals seeking tax preparation services from Co-conspirator 1's businesses provided her with their personal identifying information ("PII") including their names, dates of birth, and social security numbers.
- c. California's Employment Development Department ("EDD") was the administrator of the unemployment insurance ("UI") benefit program for the State of California.
- d. On March 13, 2020, the President of the United States declared COVID-19 an emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. As a result, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which the President signed into law on March 27, 2020. The CARES Act provided over \$2

trillion in economic relief protections to the American people from the public health and economic impacts of COVID-19.

e. Prior to the enactment of the CARES Act, to be eligible for UI administered by EDD, a person had to have been employed and worked in California and received at least a certain amount of wages from an employer in the 18 months preceding his/her UI benefits claim. Because of this requirement, self-employed workers, independent contractors, and employees with insufficient earnings were not eligible to receive regular UI benefits.

f. The CARES Act established a new program - Pandemic Unemployment Assistance ("PUA") -- to provide unemployment benefits during the COVID-19 pandemic to people who did not qualify for regular unemployment insurance benefits, including business owners, self-employed workers, independent contractors, and those with limited work history who were out of business or had significantly reduced their services as a direct result of the pandemic. UI benefits provided under the PUA program are sometimes referred to as PUA benefits.

g. Under the PUA provisions of the CARES Act, a person who was a business owner, self-employed worker, independent contractor, or gig worker could qualify for PUA benefits administered by EDD if he/she previously performed such work in California and was unemployed, partially unemployed, unable to work, or unavailable to work due to a COVID-19-related reason.

h. Persons applying for PUA benefits did not need to submit any supporting documents to EDD with their applications. Claimants entered their total income for the 2019 calendar year on the application. The stated income was used to pay the minimum benefits of \$167 per week. EDD could request documentation to provide proof of the stated income.

i. A PUA claimant was required to answer various questions to establish his/her eligibility for PUA benefits. The claimant was required to provide his/her name, Social Security Number, and mailing address. The claimant was also required to identify a qualifying occupational status and COVID-19 related reason for being out of work.

j. After it accepted a UI claim, including a claim submitted pursuant to the PUA program, EDD typically deposited UI funds every two weeks to an Electronic Benefit Payment ("EBP") debit card administered by Bank of America ("BofA"), which the claimant could use to pay for his/her expenses. The EBP debit card was mailed via the United States Postal Service to the claimant at the address the claimant provided in his/her UI application.

Defendant's Conspiracy to Defraud EDD

k. Beginning no later than February 2, 2020, and continuing through at least March 23, 2021, in Riverside County within the Central District of California, and elsewhere, defendant had an agreement with his spouse Co-conspirator 1 and others, to knowingly and with the intent to defraud, commit offenses against the United States, namely, defendant and his

co-conspirators devised, participated in, and executed a scheme to fraudulently obtain UI benefits, including PUA benefits from EDD and the United States Treasury by submitting applications for UI benefits using the names, dates of birth and social security numbers of third parties and fictitious employment information.

Defendant knew that Co-conspirator 1 filed and caused the filing with EDD of fraudulent applications for UI benefits, which falsely asserted the named claimants were self-employed independent contractors who were negatively affected by the COVID-19 pandemic, triggering eligibility for UI benefits under the PUA provision of the CARES Act. Defendant knew that Co-conspirator 1 obtained some of the PII used to submit the fraudulent claims through her prior work as a tax preparer without permission to use the PII of her former clients. Defendant and Co-conspirator 1 also offered to pay others in exchange for third parties' PII to use on EDD applications. In all instances, defendant LATHON knew that Co-conspirator 1 submitted the applications using others' PII intending to secure the benefits for himself and their family by having the EBP debit cards mailed to addresses where he and Co-conspirator 1 could collect mail.

Defendant understood that the UI applications that Co-conspirator 1 submitted, falsely asserted and caused to be asserted in furtherance of the conspiracy that the claimants were residents of California entitled to UI benefits administered by EDD when, in fact, they were not, and defendant

knew they were not. Defendant understood that the UI applications submitted by Co-conspirator 1 were based on fictitious information including employment histories, mailing addresses, e-mail accounts, and phone numbers.

As a result of the fraudulent UI benefit applications defendant and Co-conspirator 1 filed and caused to be filed, EDD authorized BofA to issue EBP cards in the names of the named claimants. Defendant knew that the UI applications would cause BofA to mail EBP debit cards issued to the named claimants via the United States Postal Service to the addresses Co-conspirator 1 provided on the fraudulent UI claim applications, including addresses where defendant and Co-conspirator 1 knew that they could collect mail.

Defendant and his co-conspirators would use, or direct others to use, the EBP debit cards to make cash withdrawals at automated teller machines ("ATMs") and to make purchases at retail stores, both types of transactions involved wire communication in interstate commerce.

Through this conspiracy, defendant and Co-conspirator 1 caused at least 44 fraudulent PUA claims to be filed resulting in losses to EDD and the United States Treasury of approximately \$998,630.

In furtherance of the conspiracy and to accomplish its objects, defendant committed various overt acts within the Central District of California, and elsewhere, including, but not limited to, the following:

On August 26, 2020, defendant used the EBP debit card held in victim A.C.'s name to withdraw \$1,000 from an ATM in Escondido, California.

On September 7, 2020, defendant and Co-conspirator 1 used the EBP debit cards held in the names of victims L.L. and D.P. to withdraw \$2,000 from an ATM in Upland, California.

Furthermore, on or about August 24, 2020, defendant knowingly possessed and used, an EBP debit card in opened in the name of victim A.C., to withdrawal \$1,000 from an ATM in Brea, California, in the County of Orange, during and in relation to the conspiracy to defraud EDD. At the time defendant used the name of victim A.C., defendant knew that A.C. was a real person.

Defendant's Unlawful Firearms Possession

On March 23, 2021, while executing a search warrant at defendant's residence in Moreno Valley, Riverside County, agents found the following items:

- a Remington, Mohawk 10C, .22 caliber rifle bearing serial number 2452183; and
- a Mossberg, 500 ATP, 12-gauge shotgun with an attached ammunition saddle.

These items belonged to defendant; he knew where they were located and he had the power and intention to control them.

The firearms seized from defendant on March 23, 2021, had been manufactured outside the State of California. Accordingly, at the time defendant possessed firearms, they had previously travelled across an interstate or international border.

When defendant possessed firearms on March 23, 2021,

defendant knew that he had been convicted of the following felony crimes, and he knew that each was punishable by imprisonment for a term exceeding one year:

Receiving stolen property, in violation of California Penal Code Section 496(a) and Possession of a Completed Check with Intent to Defraud, in violation of California Penal Code Section 475(a), in the Superior Court of California, County of Orange, case number SH975F0412, on or about May 8, 1997;

Possession of cocaine, in violation of California Penal Code Section 11350(a), in the Superior Court of California, County of Los Angeles, case number KA020702, on or about March 3, 1998; and

Fraud to Obtain Aid by Misrepresentation, in violation of Welfare and Institutions Code Section 10980(c)(2), in the Superior Court of California, County of San Bernardino, case number FSB1104727, on or about May 16, 2012.

I have read this STATEMENT OF FACTS IN SUPPORT OF PLEA AGREEMENT in its entirety. I have had enough time to review this statement of facts and I have carefully and thoroughly discussed every part of it with my attorney. I agree that this statement of facts is sufficient to support pleas of guilty to the charges described in the plea agreement and to establish the Sentencing Guidelines factors set forth in paragraph 18 of the plea agreement.

DocuSigned by:
KENNETH A LATHON
KE...0D3FBC6C68EB4A9...N
Defendant

9/1/2022
Date

I am KENNETH ANDREW LATHON's attorney. I have carefully and thoroughly discussed every part of this statement of facts with my client and agree that it is sufficient to support pleas of guilty to the charges described in the plea agreement and to establish the Sentencing Guidelines factors set forth in paragraph 18 of the plea agreement.

Jenae McDonald
JENAE MCDONALD
Attorney for Defendant
KENNETH ANDREW LATHON

09/01/22
Date

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of Riverside County, California. I am over 18 years of age, and I am not a party to the above-entitled action. My business address is the United States Attorney's Office, 3403 Tenth Street, Suite 200, Riverside, California 92501.

On this date, September 30, 2022 I served a copy of the following entitled document(s) PLEA AGREEMENT

as follows:

- ☐ by placing the document in a sealed envelope, addressed to the person specified below, and placing it for interoffice delivery within the courthouse:
- ☒ by e-mailing a pdf. version of the document to the e-mail address specified below:
- ☐ by placing the document in a sealed envelope, addressed to the person specified below, and placing it for U.S. mail delivery:

Jenae McDonald
jenae@dre.law

I declare under penalty of perjury that the foregoing is true and correct. Executed on, September 30, 2022 at Riverside, California.

/s/
Brenda Tovar